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ABSTRACT

This document contains chapter 2 (3 articles) of a collection of 35 articles primarily from American Association for Counseling and Development (AACD) publications on the most important legal and ethical topics about which all school counselors need to be informed. "Confidentiality: To Tell or Not To Tell" (Joseph C. Zingaro) asserts that a child's right to privacy, regardless of the child's age, should be compromised only in the most extreme circumstances. It offers recommendations for school counselors who are asked to disclose information told to them by a child in confidence. "Ethics and School Records" (Margaret M. Walker and Marva Larrabee) encourages school counselors to take responsibility for managing students' records in a manner that assures students of their rights. "Privileged Communication in School Counseling: Status Update" (Vernon Lee Sheeley and Barbara Herlihy) reports that 20 states have passed statutes that provide some degree of protection of the privacy involved in student and school counselor relationships. The statutes in existence are summarized and implications for practice are discussed. (NB)

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PRIVACY, CONFIDENTIALITY, AND PRIVILEGED COMMUNICATION

Confidentiality and privileged communication are two related issues that school counselors often confuse. Information clients relate to school counselors should be kept confidential with the following exceptions: (a) the client is a danger to self or others; (b) the client or parent requests that information be related to a third party; or (c) a court orders a counselor to disclose information.

Although all school counselors have a confidentiality responsibility, very few relationships with students are considered privilged. Privileged communication is granted only by statute and guarantees clients that a court cannot compel a counselor to disclose information related in confidence. Such statutory privileges belong to clients rather than to counselors, and most states do not grant privileged communication in school counseling relationships.

Zingaro (1983) takes the position that a child's right to privacy, regardless of the child's age, should be compromised only in the most extreme circumstances. He offers recommendations for school counselors who are asked to disclose information told to them by a child in confidence.

Before the Buckley Amendment was passed in 1974, many students were maligned in school records without their knowledge, and information from their records was often released to third

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parties without the students' consent. Although the students' privacy is now protected by federal legislation, Walker and Larrabee (1985) encourage school counselors to take responsibility for managing students' records in a manner that assures students of their rights.

Sheeley and Herlihy (1987) report that 20 states have passed statutes that provide some degree of protection of the privacy involved in student and school counselor relationships. The statutes in existence are summarized and implications for practice are discussed.

Confidentiality: To Tell or Not To Tell

Joseph C. Zingaro

Elementary school counselors, school psychologists, and other members of the student personnel team need to be sensitive to the issue of confidentiality with the child-client. Children depend on and have a right to expect security and protection from adults in whose care they are entrusted.

Professionals who work with children are aware of the fine line that often differentiates the rights of children from the rights of adults, especially parents. When does the child's right to confidentiality supersede the parent's right to know? Are there guidelines that school counselors and school psychologists can use to aid them in making decisions about disclosing information received within the privacy of the counselor's or school psychologist's office while doing individual or group counseling?

The American Psychological Association (APA) and the American Personnel and Guidance Association (APGA) suggest guidelines in their respective ethical standards. These ethical codes are principles that serve as guidelines for behavior. As such, they do not negate the use of clinical judgment and interpretation. Regarding confidentiality, the *Ethical Principles of Psychologists* (APA, 1981) and the *Ethical Standards* (APGA, 1981) do not suggest age restrictions. This implies that the privilege of confidentiality extends to all clients, regardless of age.

Children's rights are also based on their needs system. For example, Erickson (1963) suggests eight stages of ego development. Each stage involves the resolution of stage-relevant tasks. Each task requires the individual to balance individual needs with societal expectations. During the elementary school years (grades K-8) children are coping with the stages of initiative versus guilt, industry versus inferiority, and identity versus role diffusion.

Children in the stage labeled initiative versus guilt are characterized by a lively imagination (e.g., imaginary friends, fear of monsters), vigorous reality testing (e.g., testing of the reality of

Santa Claus, parental rules), and imitation of adults. The successful resolution of the industry versus inferiority stage involves greater self-reliance, autonomy, and mastery of certain interpersonal and physical skills. Identity versus role diffusion reflects the challenge of learning about self-individuality and working toward actualizing potential.

Musser, Conger, and Kagan (1974) describe the social environment of "the psychologically favored child" (p. 432) as an environment that values the child as an individual. This implies, among other things, that the child is not viewed as a mere extension of parents or siblings. The basic needs of autonomy, self-reliance, and mastery are provided for within this social milieu, as well as opportunities for development of the child's potential.

As mental health professionals in the schools, aware of the developmental needs of children and concerned with educating parents, teachers, and adminstrators about these needs, we must also be aware that some of our own behaviors may be counterproductive to our best efforts. Specifically, a breach of confidentiality may reflect a belief that children neither need nor deserve the individuality and autonomy that we are trying to help them achieve.

For example, a child may ask to talk with you about a problem, such as how to get along with a new stepparent. After discussing the child's concern, you arrange a time to meet at a later date. The following day one of the child's parents calls you to ask about the content of your counseling session. It seems obvious from the questions that the parent is aware of some of the issues that you discussed with the child. Would you disclose information that you received from the child to the parent? What would be the effects on the child, parents, and you if you comply with the parent's request? If the child's self-referral is viewed as a step toward autonomy and independence in solving his or her problems, have you handicapped the child's efforts? Would these questions be answered differently if the parent had asked you to speak with his or her child and then asked about the content of your counseling session?

This article suggests principles that elementary school counselors and child psychologists may use when circumstances involve the question of disclosing to parents or guardians of child clients information received within the privacy of the counselor's office while doing individual or group counseling. The questions that were suggested by the above example will be answered based on the recommendations at the end of this article.

Ethical Considerations

Confidentiality is a term that implies exclusivity. Information exchanged between people becomes theirs, not to be shared with the larger community. Van Hoose and Kottler (1978) suggest that a confidential communication between two parties must meet the following criteria:

1. The communications must originate with the understanding that they will not be disclosed.
2. Confidentiality must be essential to the maintenance of the relationship.
3. The relationship must be fostered because the community desires it.
4. Injury inflicted on the relationship as a result of disclosure or communication must be greater than the benefit gained from proper disposal of litigation. (p. 86)

Stude and McKelvey (1979) and Goldman (1969) stated that the privilege of confidentiality belongs to the client, not the counselor. In most instances the client can freely discuss issues with the counselor with the assurance that the content of those issues will be kept from society. Under certain circumstances society's need to know supersedes the individual's right to privacy. These circumstances include, but are not limited to, occasions when the client has told the counselor of harm to be directed to himself or herself or to someone else or of participation in an illegal activity and plans to continue with such activity.

In a survey of elementary, middle, and high school counselors, Wagner (1981) found that a general pattern emerged. Counselors who perceived no detrimental effects to children tended to honor parents' requests for information even though the youthful client asked that the information not be released. The counselors also tended to form greater allegiance to the parents of younger clients.

The results of Wagner's survey (1981) are disturbing for several reasons. First, rather than using ethical guidelines for the dissemination of confidential information to the parents or guardians of child-clients, some counselors rely on their general perceptions of the harmful effects that release of information will have for the client. Such calculated risk-taking needs to be discouraged because the risk is for the child who discloses the information, not the counselor who releases it. Rather than the counselor experiencing the consequences of a misperception, the client will feel the consequences to a degree that cannot be predicted by the counselor.

A counselor using his or her perceptions of probable effects of disclosure takes about as much risk as one who places bets with someone else's money.

A second disturbing result of Wagner's survey is that the younger the client, the greater the allegiance of the counselor to the parents of the client. This may create a no-win situation for the child. Based on the author's experiences, parents request information regarding their child's conversations with a counselor for three reasons: curiosity, to have a better understanding of their child, and/or to protect (defend) themselves. When parents are merely curious or request information with the intention of understanding their child and the counselor grants their request, this action reinforces the mistaken idea that children do not need or deserve privacy. This issue involves the negotiation of the parents' right to know about their child and the child's rights of freedom of speech and thought. When parents request information to protect or defend themselves, that is, to neutralize the child's information given to the counselor or suggest that the child has been less than honest with the counselor, a hidden motive may be involved that cannot be adequately assessed because the counselor usually does not know in advance why the parent is requesting the information. This is not to suggest that most parents have something to hide but that some counselors may be losing sight of the rationale for confidentiality, that is, the client's right to confidentiality regardless of age.

It might be that counseling clients who are less than 10 years old does not meet the first requirement of a confidential communication, as suggested by Van Hoose and Kottler (1978), namely that client and counselor understand that information from a counseling session will not be shared with anyone else. Counselors may not include, as a part of their counseling behavior, a discussion or explanation of confidentiality to their 6-year-old clients. It is the author's hunch that counselors do one of the following: (a) early in the counseling session, regardless of the age of the client, explain the issue of confidentiality, including when the counselor will and will not keep information confidential; (b) choose not to discuss confidentiality until the client brings up the issue; (c) have the intention of keeping the child's information confidential, but, when pressed (by parents, teachers, principals), sometimes reveal the information communicated by the child. It is apparent that the first approach is congruent with Van Hoose and Kottler's first requirement of a confidential communication. The second approach may

meet the requirement of mutual understanding of confidentiality but depends on the client's initiative. Finally, counselors who intend to keep confidences, but may, in fact, disclose information (for the good of the child, because the parent has a right to know—"If I were the parent I would like this information," to ensure the teacher's or principal's cooperation) do not meet Van Hoose and Kottler's first criterion for a confidential communication.

Is confidentiality essential to the maintenance of the child-counselor relationship? Would giving parents and teachers confidential information shared by the child do any harm if these adults promise not to tell the child or to hold the content of the confidence against the child or promise to use the information for the child's benefit? Would the release of information in fact harm the relationship the counselor has established with the client? Unfortunately, the answers are unknown, and again the counselor seems to be placing a bet with the client's money.

There are occasions when a counselor must reveal a confidence. They include: (a) when the client requests it, (b) when not to do so would result in clear danger to the client or others, and (c) when the courts request it. Some children will request the counselor to speak to parents, teachers, or other children. Given that confidentiality is a privilege of clients, such a request is well within their rights. When the counselor suspects that to reveal confidential information will protect the child from harm (in cases of child abuse or neglect, for example), the counselor is legally and ethically bound to report such information. In some instances child-clients do reveal information about someone else (peer or parent) that poses a dilemma for the counselor. For example, a child may report that another child is being abused (even if they do not use the term *abused*, their description of the activity sounds like abuse). The counselor must now make two decisions: first, are the child's reported observations accurate; and second, if they seem accurate, should the counselor take steps to investigate and report the abuse if it has occurred.

The courts may also ask a counselor to disclose confidential information. This is most likely to occur as a follow-up to a reported case of child abuse or when the child is a foster child and placement decisions need to be made. Van Hoose and Kottler (1978) and Stude and McKelvey (1979) state that unless a state statute specifically deals with privileged communication between a counselor and client, one cannot assume the courts will hold such communication legally privileged.

Recommendations

The issue of confidentiality is involved in every counseling interaction. The following suggestions are offered as guidelines for legal and ethical behavior on the part of the counselor who works with children.

1. Whether the topic of confidentiality is discussed or not, all communications between the child-client and counselor are, in fact, confidential (APA, 1981; APGA, 1981). Therefore, the counseling session itself, and not explicit agreements between the counselor and client, determines the validity of confidentiality for the child.
2. Informal discussion of case material, as opposed to a consultation, with persons not directly involved is a breach of confidentiality. Case material may be discussed with another professional when the focus of the discussion is on helping the client. Counselors who feel the need to "vent their feelings" should center the discussion on themselves, keeping the identity of the client private.
3. "Written or oral reports present only data germane to the purposes on an . . . evaluation and every effort is made to avoid undue invasion of privacy" (APA, 1981, p. 5). If you are asked to report on a child's behavior in the classroom, do not include your opinions of the parents' social standing or siblings' extracurricular activities.
4. When a client has revealed information that indicates involvement in an activity that is likely to bring harm to himself or herself or to someone else, the counselor should: (a) try to persuade the client to discontinue the activity and (b) explain the counselor's responsibility to inform appropriate authorities about the "condition" without revealing the client's identity. If steps (a) and (b) do not deter the client, the counselor is ethically bound to (c) "take reasonable personal action or inform responsible authorities" (APGA, 1981, p. 1). The authorities (parents, school, legal) will be determined by the context of the situation and the counselor's judgment of which authority will best serve the needs of the client.
5. If the counselor is subpoenaed to testify in a legal proceeding but does not wish to reveal information to protect the client's best interests, the counselor may: (a) become an agent of the client's attorney (that is, by revealing the

child's case, the counselor may invoke the attorney-client—the counselor in this case—privilege. The attorney must raise the privilege in court for the counselor to be protected by it.) and (b) request that the information be received in the judge's chamber rather than in open court. Neither of these options guarantees the counselor's privilege not to reveal information. "Ethical codes do not supersede the law" (Stude & McKelvey, 1979, p. 456).

6. In instances in which the counselor is not sure of actions to be taken, "consultations with other professionals must be used where possible" (APGA, 1981, p. 1). Other professionals include, but are not limited to, members of the pupil personnel team, school administrators, community mental health agencies, the school solicitor, university professors, and various experts in the field (errors of omission or commission may be more expensive than a long-distance phone call).
7. When parents or school personnel request information about the client, the counselor should first consider the client's right to privacy. If, in the counselor's judgment, significant others have a need to know and revealing information would be in the child's best interest, the counselor should respond by telling these adults what they can do or refrain from doing to help the child. In this way the child's communications are still privileged. In the author's experience this suggestion has been well received by parents and teachers. Adults who request information because they are curious or truly interested in their child's welfare seem satisfied with this approach.

The Parent's Request Revisited

Based on the above recommendations the answers to the questions posed in the example cited above are as follows:

1. The child may have spoken to a parent about the counseling session. Confidentiality is the child-client's privilege, and disclosing information is well within his or her rights. Even if the child has spoken with a parent, however, the counselor is ethically bound to refrain from disclosing information without the permission of the child-client unless the counselor has reason to believe that the child may

become involved in self-destructive behavior or may harm someone else.

2. The specific effects on the child, parent, or counselor are unknown. It would seem logical to assume that, to some degree, the child may trust you, as well as other adults, less than before. The parent may believe that the counselor is like a big brother or sister watching their child and willing to report back whenever the parent requests it. The counselor may begin to believe that if no harm came to the child this time, there will be no risk the next time. This belief may be hazardous to the child's psychological health.
3. In the author's experience, many children who referred themselves were trying to solve interpersonal as well as intrapersonal problems and were asking for guidance. These children used the counselor as a reference and not as a referee. They were taking steps toward greater self-reliance and personal control. Revealing the confidences of these children would discourage their efforts to develop their own repertoire of problem-solving behaviors.
4. Regardless of the referral source, when parents or teachers request information about the content of counseling sessions with a child-client, it is suggested that the counselor offer suggestions about what the interested adult can do to help the child rather than disclosing specific information.

Conclusion

Counselors and psychologists who work with children quickly learn that the size of the problems do not always correspond to the size of the client. These professionals need to take special care to protect their client's best interests. They are frequently involved in the task of deciding how to negotiate the rights and privileges of their clients with the rights of adult caregivers. It is the author's hope that the suggestions above will aid counselors and psychologists in their efforts to deal with the issue of confidentiality with children.

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Ethics and School Records

Margaret M. Walker and *Marva J. Larrabee*

Maintaining the confidentiality of school records was a problem for many educational institutions in the 1970s. Federal legislation brought public attention to the problem of maintaining and gaining access to those records. Counselors who are concerned with safeguarding the rights of students are often asked to manage some aspects of school record keeping. Without specific guidelines for interpreting school district policy regarding records, personnel who have little or no training in the legal and ethical aspects of record keeping can harm the public image of the school system and may precipitate court cases with long-range, damaging effects to students and to schools.

Detailed guidelines for implementing school board policy concerning school records are especially necessary for schools in which a certified counselor is not available or for schools in which a counselor is employed on a part-time basis. Of course, it is important for all school counselors to examine the ethical issues regarding school records, but counselors must also be knowledgeable of the state and local legislation related to handicapped students.

To assist counselors in safeguarding the rights of students and parents, this article summarizes relevant literature that defines school records, clarifies content and access terminology, and provides a basis for developing specific guidelines that local school personnel may use daily to cope with conflicting opinions on record keeping procedures and with the complications introduced by computer use.

School Records and Legislation

The Family Educational Rights and Privacy Act of 1974, or the Buckley Amendment, became law in November 1974, and the

final rules for its implementation were published in June 1976 (reprinted in Callis, Pope, & DePauw, 1982). Perhaps the most important segment of the law stated that any school district may be denied federal funds if parents are not permitted to inspect the school records of their children or if other relatives who are not guardians have access to these records without parental consent (Department of Health, Education, and Welfare, 1976, reprinted in Callis et al., 1982).

In an early study of counselors' opinions, Rezny and Dorow (1961) commented that counselors believed the "common yardstick for measuring who should have access to confidential information is based on personal opinion rather than a prevailing attitude among all teachers" (p. 250). The apparent differences between the attitudes of counselors and teachers regarding confidentiality continue because teachers are generally unaware of the ethical standards that counselors must follow and the relevance of those standards to school records. Since the Buckley Amendment was passed, the American Association for Counseling and Development (AACD) and state and local boards of education have attempted to define the rights of students regarding their school records (Getson & Schweid, 1976; Kazalunas, 1977).

Although policy statements have been issued by boards of education, as required by federal law, specific guidelines for daily use by counselors and other school personnel may not exist. In the absence of these guidelines counselors and other school personnel are left with little more than personal conviction about what constitutes legal or ethical standards for record keeping. The professional ethical standards of teachers, administrators, and counselors may aid decision making, but these documents do not address specific situations involving school records and their access.

Contents of Records

The term *school records*, as used in this article, includes those individual records for each student, including academic progress, test scores, and other data, that are generally kept in a cumulative folder in the main office of many schools. The clarification of the contents of school records offered by Bernard and Fullmer (1977) and Schrier (1980) is specifically related to student records as described in the Buckley Amendment. Bernard and Fullmer identified the contents of student records as identification data, home background, health information, educational history, anecdotal re-

marks, case summaries, and recommendations. The first four terms are understood readily, but the headings that are not self-explanatory are defined as follows:

- *Anecdotal remarks*—observation of interest, prominent abilities (art, athletics, leadership), relationships with peers and school personnel, disciplinary incidents.
- *Case summary*—usually employed only for pupils with a personal or social dilemma that impedes growth. The purpose is to draw from the data obtained in the anecdotal remarks those elements that seem significant in understanding the student, planning counseling sessions, and choosing methods for working with the student.
- *Recommendations*—remarks of previous counselors and teachers or the result of staff conferences. These should be dated, and, of course, brief (Bernard & Fullmer, 1977, p. 83).

In one example of school district guidelines referring to the contents of student records, Shannon (undated) stated that these records should include:

> any and all official records, files and data directly related to. . .children, including all material that is incorporated into each student's cumulative folder, and intended for school use or to be available to parties outside the school or system, and especially including, but not necessarily limited to, identifying data, academic work completed, level of achievement (grades, standardized achievement test scores), attendance data, scores on standardized intelligence, aptitude and psychological tests, interest inventory results, health data, family background information, teacher or counselor ratings and observations, and verified reports of serious or recurrent behavior patterns. (p.5)

Perhaps all of the contents described above should be contained in students' cumulative files. In that case the use of and access to these files must be controlled and carefully monitored according to the law.

Access to Records

Some counselors and administrators need to be more familiar with the law regulating access to school records, especially access

by nonschool personnel. When individual privacy is violated by the actions of local school personnel, the results usually are damaging to the school in which the mishandling of records occurred. Three critical obligations that ensure compliance with the Buckley Amendment are: (a) to establish policies regarding record keeping, (b) to establish guidelines for inspecting records, and (c) to provide an opportunity for parents to challenge the accuracy of the school records (Kazalunas, 1977; Shannon, undated). These obligations are the responsibilities of the school system, the counselors, and the administrators. The law specifies that policies must be written to determine who has access to records and student information without the written permission of parents. Any ambiguities that develop outside the scope of the specific information already discussed must be resolved in local school district regulations which guide school counselors and other school personnel.

In school districts where there are no regulations, where regulations are not publicized regularly, or where there are minimal general guidelines available, decisions regarding use of records are usually left to local school personnel. Because of the diversity of personnel making these decisions (e.g., administrators, counselors, teachers, nurses, psychologists, social workers, attendance officers, or other support staff), the decisions invariably reflect personal views, standards, and values (George, 1972). George contended that the legal status of various kinds of school records is of primary concern. He clearly delineated the records classified as "public records," even though confusion continues about which school records are truly public.

Public Versus Quasi-Public Records

It is not usually clear whether student records are public or private (George, 1972). For school counselors this confusion raises at least two ethical issues:

(a) How should information be released to parents, other schools, and interested parties? (b) How should counselors resolve conflicts between district guidelines for handling student records, local school implementation of policy, and the counselor's own interpretation of the applicable ethical standards and law regarding which records are public or quasi-public? George explained the distinction between public and quasi-public records by asserting:

> Public records are generally defined as those being open to all with "lawful, proper, and legitimate interests."

> such as police, researchers, journalists, employers, etc. Quasi-public records are usually defined as those open only to "real parties of interest," e.g., the public, parent legal counsel, or physician. (p. 45)

The Buckley Amendment specifies the scope of student records as "including all material that is incorporated into each student's cumulative record folder and intended for school use or to be available to parties outside the school or school system" (Gibson & Mitchell, 1981, p. 367).

Considering these descriptions and definitions, counselors should probably view school records as quasi-public. This view, advocated long ago by Burt (1964), seems to afford the most protection for students and to be in accord with the legal regulations that must be translated into actual daily practices in local schools.

Although student records may be considered actual property of students and their parents, they are also state property in the custody of school districts (George, 1972). George cited the American Bar Association Section of Individual Rights and Responsibilities to explain that improper disclosure can be avoided by separating academic records from disciplinary records and by formulating an explicit policy statement regarding content of and access to records. Of course, the Buckley Amendment addressed these issues and gave legislative credence to earlier recommendations that information "from disciplinary or counseling files should not be available to unauthorized persons within the institution or to any person outside the institution without the express consent of the student involved except under legal compulsion or in cases where the safety of persons or property is involved" (George 1972, p. 47). Compliance with the law requires permission from the parents of minors. This position on counseling records seems generally compatible with the ethical standards of counselors; however, to comply with the Buckley Amendment a counselor should not share his or her notes or make them accessible to any other school personnel if they are to be considered separate from school records.

Gibson, Mitchell, and Higgins (1983) stated conditions under which the establishment of ethical standards is appropriate: "In any activity where one human being is professionally concerned with the well-being of another, consideration must be given to providing ethical guidelines for the guidance and protection of both the professionals' membership and the clients they serve" (pp. 168–169). School record keeping and related counselor duties certainly

fit these conditions although AACD and American School Counselor Association ethical standards do not address specifically the daily concerns resulting from the Buckley Amendment.

Ethical Dilemmas for Counselors

Many changes have occurred in schools since the Buckley Amendment was passed. Because of changing social patterns in our culture and new legislation or interpretations of various aspects of the law, school policies need continuous review to remain fair and reasonable (Ball, 1973). It is often impossible for school personnel to foresee situations involving content and access to student records that are not covered by existing policies of the local school district. Atypical situations pose ethical dilemmas for most school counselors and for other school personnel. For example, when computers were first used in school record keeping, new problems compounded record-keeping procedures that were not yet delineated clearly. Through computer use information is stored and retrieved easily and quickly. The nature of the storage-retrieval action sometimes forces school personnel to make rapid decisions regarding use and access to student data.

To answer the legal and ethical questions raised by computer use, professionals must reconsider such issues as security of record-keeping, inspection and release of records, and the rights of parents and children to privacy. These student record dilemmas are aligned closely with the ethical standards of confidentiality for school counselors. Wagner (1978) specified six areas in which information may or may not be shared and he clearly stated that such decisions require knowledge of the American Personnel and Guidance Association (now AACD) *Ethical Standards* (1981) as well as:

> state statutes on privileged communication . . ., the state education department's position on the counselor and confidentiality in the schools, the state laws of child abuse, parental attitudes in the local community, the school board's position on the counselor and confidentiality, the details of the Buckley Amendment, and their own values towards children, parental authority, and school authority. (p. 247)

Guidelines for Record Keeping

Although Burt (1964) was emphatic two decades ago about establishing relevant procedures for record keeping, policies de-

veloped by school districts to comply with the Buckley Amendment may be too vague to be practical for the daily dilemmas encountered by counselors and other school personnel. Elementary and middle school counselors are guided by legislation and school district policies, but additional guidelines may be essential for the protection of students and staff. Considering the technological advances in school record keeping procedures, many school district guidelines may need revision. In addition, school personnel have 10 years of experience implementing the Buckley Amendment, and counselors in particular may have first-hand knowledge of school record-keeping procedures that may be questionable or illegal. It is reasonable that counselors and other school personnel may need more specific guidance on daily operational procedures than legislation or school district policies provide. The pressures of daily operations may be reduced when highly specific local school procedures are developed by school staff and made available to all personnel in each local school.

Before the Buckley Amendment, McMahan (1970) indicated that state and local authorities hesitated or sometimes neglected to provide specific guidelines and policies regarding the issues associated with school records, their contents, and the persons granted access to those records. Although the Buckley Amendment requires school districts to develop written policy on these matters, there may be little consistency in the actual handling of records on a daily basis in local schools. As a result of the limits usually stated in district policies, school counselors may be pressured by nonschool sources or by school personnel to overlook policy or ethical considerations. Practical local school guidelines developed in accordance with district policy and with the ethical standards of counselors would be beneficial in coping with these pressures.

Although administrators and teachers are bound by the ethical standards of various national education groups, some individuals actually pressure elementary and middle school counselors to violate confidentiality (Patterson, 1971). Marsh and Kinnick (1970) cautioned counselors not to assume that other school personnel will maintain all confidences. They concluded that counselors should participate in the formulation of policies related to students' rights to confidentiality. Of course, such a recommendation is also applicable to establishing specific local school guidelines related to student records. Once local schools establish specific guidelines for using the law and the record-keeping policies of the school district, all school personnel can be expected to abide by them if they are regularly discussed by elementary and middle school staff. Other

steps must also be taken. It is important to teach the legal responsibilities related to the counselor's role in counselor education programs and to include similar instruction in the educational training programs of other school personnel.

In-serivce training related to the legal and ethical aspects of record keeping is possible on a regular basis for professional school personnel, but such matters may be neglected for other school staff. Wagner (1981) reported that approximately 50% of elementary, middle, and secondary counselors agreed that they were concerned about secretarial handling of confidential material. In some districts this worry may be expanded to include teachers aides, student workers, or other school personnel who have access to any particular student's record or to school records in general. Counselors may need to address these issues by participating in the review and development of specific record-keeping procedures in their local schools. In addition counselors may find that initiating in-service training regarding these matters or conducting the training themselves may be well within the consultative role of the counselor in the school.

As indicated above in our review of selected school district policies on record keeping, development of specific guidelines requires knowledge of the law, periodic review of changes in the law, development of a policy that is specific for guiding the use of records (Allendale County School Board, 1983), specification of who has access to particular records, and procedures for release of information contained in the records. Certainly, a periodic review of district policies is essential, but actual examination of local school implementation procedures is needed to ensure that school district policy complies with the law in daily practice.

The existence of problems with maintenance and confidentiality of school records requires counselors to work in a professional manner to safeguard the rights of students. Elementary and middle school counselors who accept the challenge of protecting student rights can be instrumental in initiating district policy review and revision and in developing local school procedures for implementing policy. Specific guidelines for the use of school records can be formulated to enable school personnel to protect student rights, to maintain confidentiality, to monitor and govern access to records, and to promote reasonable amounts of procedural uniformity throughout each school system. Elementary and middle school counselors have the skills to facilitate an exchange of ideas among school personnel that may result in establishing or correcting record-keeping procedures to ensure the best possible im-

plementation of legal and ethical standards for school records in daily practice.

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Privileged Communication in School Counseling: Status Update

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In this article we report the findings of research conducted in 1985 to update the status of privileged communication statutes pertaining to school counselors and pupils they counsel. Privileged communication is a legal right that exists by state statute and protects pupil clients from having their confidential communications disclosed in court without their permission.

Rationale

It has been suggested that clients will be more likely to seek counseling help and to share concerns if their counselors can guarantee that their confidences will be protected from disclosure (Deblaissie, 1976; Gade, 1972; Litwack, Rochester, Oates, & Addison, 1969; Norton, 1970; Nugent, 1981; Peters, 1970). Such assurances are important in the school setting.

Children and youth in modern society act out major events and transitions of their lives with organizations, including educational institutions, as attentive partners. Among the educators are school counselors involved in face-to-face encounters with pupils to help them develop positive self-concepts. The extent of pupil client disclosures to school counselors depends on how much personal information the situations warrant; however, confidential treatment of specific pupil self-revelations is often necessary to maintain communication relationships.

Ethical standards of professional associations, including the American School Counselor Association (ASCA), support the legitimate expectation of confidentiality—to withhold information (either voluntarily or in response to a demand when the counselor

does not have authorization from clients) except under certain conditions. Therefore, school counselors have a professional obligation to honor the pupils' rights to have private conversations with them. Privileged communication statutes further advance societal concerns for student rights.

School counselors who want to know whether their communications with pupils are privileged by statutes and exactly what these statutes mean for them in practice may find it difficult to obtain answers to these questions. One source of confusion has been that the terms *ethical confidentiality* and *privileged communication*, although they are not synonymous, have sometimes been used interchangeably in the literature (Litwack et al., 1969). Also, sources to whom school counselors might turn for information have not always been clear in their understanding of privileged communication law. For example, Peer (1985) surveyed state guidance directors late in 1982 and found that only 62% were certain whether pupil clients of secondary school counselors under their supervision were protected by privileged communication statutes. Our study, conducted about 2 years later, revealed that 78% were certain.

Method

Contacts with the legislative research commission council, state librarians, and Department of Education officials in the 50 states, the District of Columbia, and the six U.S. trust territories yielded relevant privileged communication statutes. Statutes pertaining solely to privacy of student records were excluded.

Results and Discussion

We found that 20 states have currently existing privileged communication statutes that provide full or partial protection of communications between school counselors and their pupil clients. School counselors in one state (Ohio) are extended privileged communication rights under the professional counselor licensure law.

The following are questions school counselors might ask about privileged communication. Responses are based on data obtained in this study and a review of the literature.

What is the background of school counselor efforts to obtain privileged communication rights?

Because professional codes of ethics are based on the belief that confidentiality is essential to successful counseling, privileged communication legislation would logically seem to have accompanied the development of ethical and professional standards. Yet, although the American Personnel and Guidance Association (APGA) (now American Association for Counseling and Development [AACD]), has stressed the importance of confidentiality in its ethical standards first published in 1961 (AACD, 1981), privileged communication legislation has been a more recent phenomenon.

At the end of the 1960s, only three states (Michigan, 1963; Indiana, 1965; North Dakota, 1969) had legislated privileged communication rights for pupil clients with school counselors. Early in the next decade, there was much more legislative activity. In 1974, the Privileged Communication Committee of ASCA conducted a national survey and found that 16 states provided full or partial protection to school counselors (Shafer, 1974). In addition to Indiana, Michigan, and North Dakota, the 14 states we found and the years in which their privileged communication statutes took effect are: Idaho, Maryland, Montana, North Carolina, Oklahoma, Oregon, South Carolina, South Dakota, and Washington, 1971; Pennsylvania, 1972; Maine and Nevada, 1973; Iowa and Kentucky, 1974.

By 1974, however, the momentum had begun to stall. In 1973 alone, school counselors in 13 states failed in their attempts to acquire privileged communication rights (Shafer, 1974). In some cases, legislation was introduced but failed to gain committee approval; in others, the bill was forwarded out of committee but not approved by the legislature. In New York, the bill was vetoed by the governor, who feared that it would inhibit counselors from reporting pupil drug usage. Despite continuing legislative efforts since 1974, only three more states (Connecticut, 1978; Wisconsin, 1979; and Ohio, 1984) have established privileged communication statutes specifically for pupil clients of school counselors.

To which school professional personnel is privilege extended?

State statutes vary considerably with respect to which professional relationships are granted privileged communication rights. Statutes in six states (Kentucky, Maine, North Carolina, North Dakota, South Carolina, and Washington) extend privilege specifically and exclusively to the pupil client–school counselor relationship.

The statutes in the remaining states include other school professional personnel in addition to counselors. Five states (Con-

necticut, Maryland, Michigan, Oklahoma, and Oregon) extend privileged communication to all professional employees in the school. The nine remaining states extend privileged communication to school counselors and in various combinations to other specified professionals including psychology teachers (Montana and Ohio), psychologists (Idaho, Iowa, Montana, Nevada, Ohio, Pennsylvania, South Dakota, and Wisconsin), school nurses (Indiana, Iowa, Montana, Pennsylvania, and Wisconsin), home and school visitors (Pennsylvania), and social workers (Indiana, Iowa, Ohio, and Wisconsin).

What limitations and exceptions do the statutes impose?

In five states (Connecticut, Maryland, South Carolina, Washington, and Wisconsin), the only communications between school counselors and their pupil clients that are privileged are those related to student alcohol and drug problems. At the other extreme, some states specify no limitations. For example, the Indiana statute reads in its entirety, "A school counselor is immune from disclosing privileged or confidential communication made to him as a counselor by a student. The matters communicated are privileged and protected against disclosure" (N. Thoms, personal communication, March 7, 1983). Other states vary in their degree and scope of protection. Some statutes apply to criminal and civil cases, while others apply only to civil cases.

A number of states specify circumstances under which the counselor must provide information. These should be viewed as exceptions, however, rather than as limitations, because they describe circumstances in which school counselors are legally or ethically obligated to disclose information for the safety and well-being of the pupil client and others. Exceptions to privileged communication laws and states that require each include (a) reporting crime or likelihood of crime (Connecticut); (b) reporting child abuse or neglect (North Carolina, Ohio, Pennsylvania, and Washington); (c) when there is clear and imminent danger to the client or others (Maine, Ohio, Oregon, and South Dakota); (d) when presiding judge compels disclosure (North Carolina and Ohio); and (e) when client's condition requires others to assume responsibility for him or her (Maine). States other than Indiana with statutes that do not specify major limitations or exceptions to privileged communication include Idaho, Kentucky, Michigan, Montana, North Dakota, and Oklahoma. Nevada has an exception only for communications relating to criminal offense.

Who may waive counselor privilege?

Several writers have noted that it is important for counselors to remember that privileged communication is the client's right (Corey, Corey, & Callanan, 1984; Eberlein, 1977; Locke, 1984; Nugent, 1981). Thus, if the pupil chooses to waive privilege, the counselor has no grounds for withholding information. Four state statutes include provisions for involving parents in the decision whether to waive counselor privilege when the pupil is a minor child. Two of these states (Michigan and Pennsylvania) require parent consent for disclosure and the two others (Kentucky and Montana) require student and parent consent when the pupil is a minor.

Implications for Practice

As Remley (1985) has noted, ethical and legal standards sometimes disagree in such areas as confidentiality and privileged communication, presenting conflicting approaches to the same situation. Thus, school counselors in the 30 states without privileged communication protection may find themselves faced with an ethical dilemma when called on to testify in court. They are not completely without recourse, however. They may explain their codes of ethics to the presiding judge and ask that privilege be extended to them. Or, as Stude and McKelvey (1979) have suggested, the counselor might reveal the client's confided information to the attorney handling the client's case, thus making the counselor an agent of the attorney and perhaps entitling the counselor to invoke the attorney-client privilege. Finally, counselors may request that their testimony be heard *in camera* (in the judge's chambers or in open court without spectators). Some attorneys advise that judges may be sympathetic to such requests.

On the other hand, school counselors need to remember that privileged communication laws run counter to the common law tradition that the public has a right and the court has a need to hear every person's evidence. Thus, school counselors should not automatically assume that an existing statute will exempt them from testifying in court, because "privileged communication laws are an exception under the rules of evidence, and the courts may require that every detail of the law be met before allowing a privilege to stand" (Knapp & VandeCreek, 1983, p. 95).

Conclusion

Questions of confidentiality and privileged communication defy simple answers. School counselors need to exercise their professional judgment and weigh their obligations to confidentiality and nondisclosure against their obligations to others. Professional codes of ethics state that the counselor must reveal information under certain circumstances, such as when there is a clear and imminent danger to the client or to others. In working with clients who are minors, school counselors must frequently involve adults for counseling to be effective. As a result, the pupil's right to confidentiality is sometimes outweighed by the need to inform parents, guardians, teachers, or other adults. In such cases, the counselor should secure the pupil's consent to disclose whenever possible (Remley, 1985). Corey et al. (1984) have pointed out that counseling is a risky venture.

School counselors need to be knowledgeable about privileged communication laws and their applications, and at the same time they must remain sensitive to the broader implications of their decisions in practice.

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